**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

| | |
|---|---|
| VERITION PARTNERS MASTER FUND, LTD. and VERITION MULTI-STRATEGY MASTER FUND, LTD.,<br><br>*Plaintiffs*,<br><br>v.<br><br>W. BRADFORD CORNELL, SAN MARINO BUSINESS PARTNERS, LLC, and COHERENT ECONOMICS, LLC,<br><br>*Defendants*. | C.A. No --CCLD<br><br>TRIAL BY JURY DEMANDED |

## COMPLAINT

Plaintiffs Verition Partners Master Fund, Ltd. and Verition Multi-Strategy Master Fund, Ltd., by and through their undersigned counsel, make this Verified Complaint against Defendants W. Bradford Cornell, San Marino Business Partners, LLC, and Coherent Economics, LLC, and in support thereof, allege as follows:

## NATURE OF THE ACTION

1. In this action, Plaintiffs seek to hold Defendants accountable for their egregious conduct while providing expert consulting and testifying services in connection with an appraisal action in the Delaware Court of Chancery entitled *In re Appraisal of AOL, Inc.*, No. 11204-VCG (the "Appraisal Action").

2. Plaintiffs required independent consulting and testifying expertise to prove their claims in the Appraisal Action, in which the credibility of the testifying

experts was of paramount importance. After Defendants falsely confirmed that Cornell had no conflicts and could take on the matter, Plaintiffs retained Defendants as their financial consulting and testifying experts. Plaintiffs not only paid them substantial consulting fees, but placed the fate of their case in Defendants' hands.

3. What Defendants failed to disclose was that Cornell had only taken on the engagement for Plaintiffs to satisfy an admitted "grudge" he held against Plaintiffs' litigation opponent, which had spurned hiring Cornell in favor of a competing testifying expert. While trying to solicit Plaintiffs' litigation opponent, Cornell expressed negative views about the strength of Plaintiffs' case. Plaintiffs and their counsel knew none of this when they retained him.

4. When Cornell's undisclosed communications surfaced in the midst of the Appraisal Action—after Plaintiffs had disclosed Cornell as their expert and expert reports were issued—the consequences for Plaintiffs were devastating. The disclosure of these communications effectively destroyed Cornell's testimony, which forced Plaintiffs to essentially abandon him as their expert and rely primarily on cross examining the opposing expert.

5. Predictably, the outcome in the Appraisal Action was disastrous for Plaintiffs, who suffered significant damages resulting from Defendants' misconduct.

## THE PARTIES

6. Plaintiff Verition Partners Master Fund, Ltd. is a company organized under the laws of the Cayman Islands with its principal place of business in Greenwich, Connecticut.

7. Plaintiff Verition Multi-Strategy Master Fund, Ltd. is a company organized under the laws of the Cayman Islands with its principal place of business in Greenwich, Connecticut.

8. Defendant W. Bradford Cornell ("Cornell") resides in California, but spent substantial time in Delaware as part of his duties as an expert witness in the Appraisal Action.

9. Defendant San Marino Business Partners, LLC ("San Marino") is a California limited liability company with its principal place of business in La Canada Flintridge, California. Cornell provides services as an economics consultant and expert witness through San Marino for complex commercial disputes, and did so in connection with his work on behalf of Plaintiffs in the Appraisal Action. San Marino issued invoices for Cornell's work in the Appraisal Action.

10. All of the actions taken by Cornell that are alleged here were carried out through San Marino, which is therefore liable for his conduct.

11. Defendant Coherent Economics, LLC ("Coherent") is an Illinois limited liability company with its principal place of business in Chicago, Illinois. It

offers litigation support and consulting services, including expert testimony for complex commercial disputes. Upon information and belief, Coherent has a contract with San Marino that enables Cornell to serve as a Coherent litigation consultant.

## JURISDICTION

12. This Court has jurisdiction over this action pursuant to 10 *Del. C.* Section 3104, because all of the Defendants transacted business and performed work or services in Delaware in connection with their expert representation of Plaintiffs in the Appraisal Action.

## FACTUAL ALLEGATIONS

### Plaintiffs' counsel retains Coherent to use Cornell as Plaintiffs' valuation expert in the Appraisal Action

13. On February 10, 2016, Plaintiffs' counsel retained Coherent, Cornell, and San Marino to provide expert consulting services in connection with the representation of Plaintiffs (among other petitioners) in the Appraisal Action.

14. Plaintiffs were the intended and immediate beneficiary of that agreement, under which Cornell—through San Marino—agreed to be Plaintiffs' testifying financial expert.

15. In that letter agreement, Coherent confirmed its understanding that Plaintiffs' counsel needed Cornell to provide "independent" expert financial analysis in the Appraisal Action.

**Cornell fails to disclose his bias and disabling conflict of interest**

16. Unbeknownst to Plaintiffs or their counsel, Cornell had, prior to being retained on Plaintiffs' behalf in the Appraisal Action, repeatedly solicited Plaintiffs' litigation opponent, Verizon Communications Inc. ("Verizon"), to serve as its financial expert in the Appraisal Action. Among other things, while trying to get retained by Verizon, Cornell told Verizon that he believed Plaintiffs' case was "shitty" and that Verizon had "the better side of the case."

17. At the time Cornell made those statements, he was affiliated with another expert consulting firm, Compass Lexecon. This meant that if a party wanted to retain Cornell as its consulting or testifying expert, that party would have to engage Compass Lexecon to use Cornell's services. But when Cornell learned that he had been rejected by Verizon in favor of another Compass Lexecon expert, Professor Daniel Fischel, he switched his affiliation to Coherent and agreed to work for the Plaintiffs. Ultimately, as further described below, Verizon used Cornell's pre-retention communications to its strategic advantage in the Appraisal Action.

18. Neither Cornell, San Marino, nor Coherent ever disclosed to Plaintiffs or their counsel that Cornell had attempted to solicit Verizon prior to being retained by Plaintiffs; had that fact been disclosed, Plaintiffs would never have engaged Cornell, San Marino, or Coherent.

**Cornell's undisclosed communications with Verizon**

19. Cornell reached out to the law firm of Wachtell Lipton Rosen & Katz ("Wachtell Lipton"), Verizon's counsel in the Appraisal Action, by email on July 10, 2015. In that communication, he pitched himself as a qualified expert for Verizon based on the work he had performed as a valuation expert on behalf of Verizon in another appraisal action in 2014.

20. The next day, July 11, 2015, Cornell sent an e-mail directly to Verizon to pitch his services as an expert in the Appraisal Action. In that communication, he told Verizon's in-house counsel his views about "what a nuisance these [appraisal] cases can be," and further observed that "[t]hey generally have little merit but are almost becoming a cost of doing an acquisition." He speculated that Verition's strategy amounted to "legal arbitrage."

21. On July 28, 2015, Cornell told Fischel that Verizon had "the better side of the case in [his] opinion and [that he] would not want to loose [sic]" the opportunity to serve as Verizon's expert.

22. In a separate communication with Verizon's in-house counsel that day, Cornell assured Verizon that he "could not work against" the company. In response, Verizon thanked him and said they were "very glad that [he wouldn't] be appearing against us."

23. The acknowledgement that Cornell could not work against Verizon in the Appraisal Action was later referenced in another email between Fischel and Cornell on July 31, 2015, in which Fischel noted the possibility that Plaintiffs might want to retain Cornell in the Appraisal Action, before dismissing that prospect as something that was "not going to happen."

24. On August 11, 2015, Fischel told Cornell that he had been asked by Wachtell Lipton whether Compass Lexecon had been retained to represent the petitioners in the Appraisal Action. Fischel related that he had told Wachtell that he "put the approach from the petitioners on hold" pending Verizon's decision. In response, Cornell remarked, "Good news."

25. Everything then changed when Verizon rejected Cornell. On November 3, 2015, Fischel told Cornell that Verizon had selected Fischel over Cornell as its expert in the Appraisal Action. Over the next two days, Cornell sent emails trying to find out who was representing the petitioners. On the Sunday morning of November 8, 2015, Cornell sent Fischel the following email, titled "Verizon/AOL":

> Dan,
>
> **Like you I tend to bear grudges**. And though I see you as perhaps the best general expert witness in the country, when it comes to appraisal, particularly for tech companies, I think I am uniquely well qualified. **So when Verizon/Wachtell chose you without even talking to me further that leads to a grudge against them**.
>
> **Consequently, I have had some conversations with plaintiffs**. I don't know if it will go anywhere or if I like the case enough to take it. But if it looks OK, I plan to go forward. I don't want to make a habit of being adverse to [Compass Lexecon], **but I see this as another special case**. I will let you know if anything comes of it.

(emphases supplied)

26. In a later exchange with Fischel, Cornell stated that his "main concern [in working for Plaintiffs] is that **the plaintiffs have a shitty case** (that is not based on conversation just what I have read online) so **I will have to be careful to avoid letting my grudge lead to a situation where I threaten my reputation**." (emphases supplied)

27. In conversations with Plaintiffs' counsel, Cornell falsely represented that he had no conflicts working against Verizon and failed to disclose his prior communications with Verizon, its counsel at Wachtell Lipton, and Fischel, who became Verizon's expert. As stated above, those communications—all of which were obtained by Verizon's counsel during the Appraisal Action—revealed both the debilitating "grudge" Cornell held against Verizon and his negative assessment of Verition's case, each of which were exploited on cross-examination.

28. Had Plaintiffs known of Cornell's undisclosed bias and that he had disparaged Plaintiffs' case directly to Verizon, they would never have retained him, San Marino, or Coherent.

**Cornell's pre-retention communications with Verizon surface during the litigation**

29. Because Compass Lexecon gave Cornell's communications with Compass Lexecon to Verizon and Wachtell Lipton, Verizon was able to use them to its strategic advantage. Verizon waited until after experts were disclosed and Cornell had issued a report before springing these communications on Plaintiffs' unsuspecting counsel—at which point it was too late for Plaintiffs to replace Cornell as their financial expert.

30. Thus, Cornell's bias and conflict represented a ticking time bomb that detonated in the midst of litigation, with devastating consequences for Plaintiffs.

**Cornell's undisclosed conflict torpedoes Plaintiffs' case**

31. The unexpected disclosure of Cornell's pre-retention communications with, and grudge against, Verizon wound up ruining Plaintiffs' claim. During the trial, the Court ruled that Verizon's questions regarding Cornell's incapacitating bias were a proper line of inquiry. The Vice Chancellor held that such questions did "make a difference with Professor Cornell because the argument is going to be that it goes to his motive here," thus demonstrating that the court credited Verizon's argument about his bias.

32. Verizon's initial post-trial brief hammered the point home:

> Shortly after this lawsuit began, Dr. Cornell lobbied hard to be retained by Verizon and AOL, telling Verizon that lawsuits like this were a "nuisance" and a "problem" and that AOL "has the better side of the case." But when Verizon and AOL hired someone else, Dr. Cornell developed a "grudge" against them and decided to work for the other side.

33. Similarly, in its answering post-trial brief, Verizon devoted an entire section of 3.5 pages arguing that "Cornell's Analysis Should Be Disregarded Because Of His Bias." There, Verizon argued that his opinion that Plaintiffs had a "shitty" case represented his "unvarnished contemporaneous view" that was "more revealing than anything Cornell wrote in his expert reports." (citation and internal alterations omitted)

34. Plaintiffs' post-trial briefs could not defend this conflict and bias. Plaintiffs' opening post-trial brief relegated its discussion of the issue to a footnote, which did no more than refer to Fischel's testimony that he respected Cornell as a scholar and valuation expert.

35. After reviewing Verizon's opening post-trial brief, Plaintiffs were forced to capitulate on this point in their answering post-trial brief: they devoted only a footnote in Cornell's defense, in which Plaintiffs could only suggest that the Court could "use **Fischel's** model as a starting point and add to it . . ." (emphasis supplied)

36. Thus, due to the damage caused by Cornell's bias being revealed in the midst of the case, Plaintiffs' counsel was forced to argue that the court should use the model of the *opposing* expert. It is very difficult to win an appraisal case in this way.

**The court rejects Plaintiffs' claims**

37. Unsurprisingly, the Court sided with Verizon. The Court was charitable in declining to expose Cornell's bias and conflict in its opinion. But there was no doubt which expert's opinion formed the foundation for the court's analysis:

> For reasons not necessary to detail, however, the Respondent questioned Dr. Cornell's impartiality in this matter, and the Petitioners seem content to use the DCF model presented by the Respondent's expert as a starting point for my analysis. Accordingly, **I start with the DCF valuation provided by that expert, Professor Daniel Fischel, and consider the Petitioners' limited arguments that certain assumption or inputs in that valuation must be changed**.

(emphasis supplied)

38. Ultimately, the court applied a couple of minor adjustments to Fischel's model that resulted in a fair value determination of $48.70 per share of AOL, far closer to Fischel's valuation of $44.85 per share than to Cornell's valuation of $68.98 per share.

39. As a result of Defendants' actions, Plaintiffs lost the difference between the fair value determination that the court in the Appraisal Action would have reached had Defendants been unconflicted (or had a suitably qualified unconflicted

expert been retained), and the fair value determination that the Court in the Appraisal Action actually reached.

40. Further, Plaintiffs wasted the substantial fees they spent on the Appraisal Action as a result of Defendants' misconduct.

**Defendants try to evade responsibility for their misconduct by filing declaratory judgment actions**

41. In an attempt to resolve this dispute, Plaintiffs sent demand letters to Coherent and Cornell on December 11, 2018.

42. In response to those demand letters, Defendants filed declaratory judgment actions in the United States District Court for the Northern District of Illinois on December 20, 2018.

43. In those actions, Defendants sought a declaration from the federal court that Plaintiffs' claims against Defendants had been barred as a result of two documents Coherent sent to Plaintiffs' counsel in the Appraisal Action.

44. Specifically, Defendants' filings referred to a letter dated April 27, 2017 that Coherent wrote to Plaintiffs' counsel in the Appraisal Action, Stuart Grant. In that letter, Coherent referenced a purported oral conversation between Coherent's principal, Alan Frankel, and Stuart Grant in which Frankel supposedly offered a "substantial discount on our outstanding invoices as a gesture of goodwill and settlement of any and all issues outstanding between our firms relating to our work,

invoicing, or payments on the AOL engagement, conditional on prompt payment of the remaining amounts on all outstanding invoices."

45. Coherent's letter concluded, "I hope you will accept my offer. In any event, please let us know by May 5."

46. Attached to Coherent's April 27, 2017 letter was an invoice dated April 26, 2017. That invoice included the following language: "This is the final invoice in the AOL Appraisal matter. Full payment of the Final Amount Due indicated above will resolve and settle all outstanding Coherent invoices and issues between Coherent Economics and Grant & Eisenhofer with respect to the AOL Appraisal matter."

**Plaintiffs never waived the claims they assert here**

47. Coherent's April 27, 2017 offer letter did not waive any of the claims Plaintiffs assert here, for several reasons.

48. First, by its terms, the purported offer related only to "issues outstanding between our firms." The reference to "firms" meant Coherent and the firm of Grant & Eisenhofer P.A. Therefore, the offer did not even *ask* for a release of Plaintiffs' claims. Nor did the offer purport to release any claims against Cornell or his consulting entity, San Marino.

49. Second, the claims Plaintiffs assert here were not "issues outstanding" as of April 2017. Grant & Eisenhofer never discussed Plaintiffs' potential claims with Coherent. The discussion between Stuart Grant and Alan Frankel addressed a billing dispute resulting from Defendants' deficient economic analysis.

50. Third, Plaintiffs had no knowledge of Coherent's offer and did not authorize Grant & Eisenhofer to waive any of Plaintiffs' claims.

51. Finally, Grant & Eisenhofer never accepted Coherent's offer. Coherent's offer required acceptance by May 5, 2017. Grant & Eisenhofer never responded to the offer.

52. For the same reasons, the invoice attached to the Coherent offer letter did not result in a waiver of Plaintiffs' claims. The invoice simply reflected the offer made in the letter, which was never accepted.

53. Even if it were accepted, the invoice only purported to "resolve and settle all outstanding Coherent invoices and issues between Coherent Economics and Grant & Eisenhofer with respect to the AOL Appraisal matter." For the reasons stated above, the claims Plaintiffs assert here were not outstanding issues between those firms.

## COUNT I: FRAUDULENT INDUCEMENT

54. Plaintiffs incorporate herein by reference all the foregoing paragraphs as though fully set forth herein.

55. Cornell and San Marino had an agreement with Coherent through which they affiliated with Coherent for purposes of the Appraisal Action. Plaintiffs' counsel in the Appraisal Action would pay Coherent, which in turn would pay Cornell and San Marino for their consulting and testifying work. Therefore, Cornell's and San Marino's work on the Appraisal Action was conducted on behalf of Coherent.

56. As a result of Defendants' failure to disclose Cornell's admitted bias and dismissive remarks to Verizon's counsel about Plaintiffs' case, disclosures that Defendants knew they needed to make for Plaintiffs to have a full understanding of the relevant facts, Plaintiffs were fraudulently induced to retain Defendants.

57. At all times, Cornell and San Marino acted as Coherent's agents and Cornell's and San Marino's representations and/or failures to disclose were made in the scope of their agency.

58. Cornell, San Marino, and Coherent falsely represented that Cornell had no conflicts and would provide "independent" expert analysis in the Appraisal

Action when in fact Cornell was not "independent" because he had a major conflict due to his undisclosed bias.

59. Cornell, San Marino, and Coherent knew that such representations were false, or were recklessly indifferent to the truth of such representations.

60. Cornell, San Marino, and Coherent, in making these false representations and material omissions, intended to induce Plaintiffs to retain them to provide expert economic analysis in the Appraisal Action.

61. Plaintiffs' justifiably relied on Cornell's, San Marino's, and Coherent's false representations and material omissions in retaining Cornell and Coherent.

62. Plaintiffs suffered damages as a result of their justifiable reliance on Cornell's, San Marino's, and Coherent's false representations and material omissions. As set forth above, the Court in the Appraisal Action reached a fair value determination that was significantly lower than what Plaintiffs would have received if Cornell's analysis had been credited. Further, Plaintiffs paid significant fees in the Appraisal Action but received no benefit from those fees. Virtually all of the time Plaintiffs' counsel in the Appraisal Action spent interacting with Coherent and Cornell was wasted.

## COUNT II: FRAUDULENT CONCEALMENT

63. Plaintiffs incorporate herein by reference all the foregoing paragraphs as though fully set forth herein.

64. At all times, Cornell and San Marino acted as Coherent's agents and Cornell's and San Marino's representations and/or failures to disclose were made in the scope of their agency.

65. Cornell, San Marino, and Coherent deliberately concealed Cornell's conflict when being asked to confirm that he had no conflicts, in violation of their duty to speak in that circumstance in light of the confidential and close relationship between Defendants and Plaintiffs.

66. Cornell, San Marino, and Coherent thus failed to disclose a material fact about Cornell's independence.

67. Cornell, San Marino, and Coherent acted with scienter in concealing the truth from Plaintiffs.

68. Cornell, San Marino, and Coherent, in concealing the truth, intended to induce Plaintiffs to retain them to provide expert economic analysis in the Appraisal Action.

69. Cornell's, San Marino's, and Coherent's concealment of the truth caused Plaintiffs to retain them in the Appraisal Action, which Plaintiffs would never had done had the truth been disclosed.

70. Plaintiffs suffered damages as a result. As set forth above, the court in the Appraisal Action reached a valuation that was significantly lower than what Plaintiffs would have received if Cornell's analysis had been credited. Further, Plaintiffs paid significant fees in the Appraisal Action but received no benefit. Virtually all of the time Plaintiffs' counsel in the Appraisal Action spent interacting with Coherent and Cornell was wasted.

## COUNT III: BREACH OF CONTRACT

71. Plaintiffs incorporate herein by reference all the foregoing paragraphs as though fully set forth herein.

72. Plaintiffs, through their counsel in the Appraisal Action, retained Coherent, Cornell, and San Marino through the engagement letter, a valid agreement to which Plaintiffs were a third-party beneficiary.

73. As explained below, Defendants breached the engagement letter.

74. Defendants did not provide "independent, expert economic analysis and opinions" to Plaintiffs' counsel, as the engagement letter required. In fact, Defendants had an undisclosed bias and a disabling conflict that surfaced at the worst possible time in the litigation, with devasting effects on the Plaintiffs' case.

75. Plaintiffs suffered damages as a result of this breach of contract. As set forth above, the Court in the Appraisal Action reached a valuation that was significantly lower than what Plaintiffs would have received if Cornell's analysis

had been credited. Further, Plaintiffs paid significant fees in the Appraisal Action but received no benefit. Virtually all of the time Plaintiffs' counsel in the Appraisal Action spent interacting with Coherent, Cornell, and San Marino was wasted.

**COUNT IV: AIDING AND ABETTING FRAUD**

76. Plaintiffs incorporate herein by reference all the foregoing paragraphs as though fully set forth herein.

77. Defendant Cornell perpetrated a fraud on Plaintiffs, as described above.

78. In the event Coherent is not liable for fraud as a primary violator, it is liable for aiding and abetting Cornell's fraud.

79. Coherent was aware of Cornell's fraud, either through its actual knowledge or because Cornell's knowledge is imputed to Coherent because Cornell acted as Coherent's agent at all times.

80. Coherent aided and abetted Cornell's fraud as either an active participant, or by providing substantial assistance in support of Cornell's fraud.

81. Coherent permitted Cornell to affiliate with Coherent to secure Plaintiffs' valuable business.

82. Plaintiffs suffered damages as a result. As set forth above, the court in the Appraisal Action reached a valuation that was significantly lower than what Plaintiffs would have received if Cornell's analysis had been credited. Further, Plaintiffs paid significant fees in the Appraisal Action but received no benefit.

Virtually all of the time Plaintiffs' counsel in the Appraisal Action spent interacting with Coherent and Cornell was wasted.

**COUNT V: PROFESSIONAL MALPRACTICE**

83. Plaintiffs incorporate herein by reference all the foregoing paragraphs as though fully set forth herein.

84. Plaintiffs retained Defendants to provide professional independent expert consulting and testifying services.

85. Defendants' conduct constituted professional malpractice in that they failed to meet the applicable standard of care in their industry, as explained below.

86. Cornell's CV on the Coherent website touts, *inter alia*, his affiliations with the American Finance Association ("AFA") and the American Economic Association ("AEA").

87. The AFA's Code of Professional Conduct and Ethics requires that "[i]n research, teaching, practice, and service, financial economists should be alert to situations that might cause a conflict of interest or the appearance of a conflict of interest, and take appropriate action to prevent a conflict of interest *or disclose it to appropriate parties*." ¶ 4(a) (emphasis added).

88. Similarly, the AEA's Code of Professional Conduct requires, among other things, "disclosure of real and perceived conflicts of interest."

89. Defendants failed to make these required disclosures, in violation of the reasonable standards of care expected of those in their field.

90. Plaintiffs suffered damages as a result. As set forth above, the Court in the Appraisal Action reached a valuation that was significantly lower than what Plaintiffs would have received if Cornell's analysis had been credited. Further, Plaintiffs paid significant fees to Defendants in the Appraisal Action but received no benefit. Virtually all of the time Plaintiffs' counsel in the Appraisal Action spent interacting with Coherent and Cornell was wasted.

91. The claim asserted here by Plaintiffs has an amount in controversy of $1 million or more.

## PRAYER FOR RELIEF

**WHEREFORE**: Plaintiffs request that this Court enter an order:

(a) holding Defendants jointly and severally liable for approximately $25.2 million, which represents the difference between the fair value of Plaintiffs' shares according to Cornell's expert opinion and the value Plaintiffs received from the court in the Appraisal Action, plus interest thereon of at least $5.5 million;

(b) holding Defendants jointly and severally liable for the fees Plaintiffs incurred in connection with the Appraisal Action that were wasted because Plaintiffs received no benefit due to Defendants' misconduct;

(c) Awarding Plaintiffs their costs and expenses, including reasonable attorneys' fees, incurred in this action; and

(d) Such other relief as the Court may deem just and proper.

Dated: January 28, 2019

SMITH KATZENSTEIN JENKINS LLP

*/s/ David A. Jenkins*
David A. Jenkins (No. 932)
1000 West Street, Suite 1501
Wilmington, DE 19801
(302) 652-8400
denkins@skjlaw.com

*Attorneys for Plaintiffs*

*Of Counsel*:

Erik S. Groothuis
Vera M. Kachnowski
SCHLAM STONE & DOLAN LLP
26 Broadway
New York, New York 10004
(212) 344-5400
egroothuis@schlamstone.com